

IN THE CHANCERY COURT FOR LEWIS COUNTY

AT HOHENWALD, TENNESSEE

IN RE:

SENTINEL TRUST COMPANY

---

AFFIDAVIT OF WILLIAM R. HILL

I, William R. Hill, first being duly sworn upon my oath, hereby depose and state as follows:

1.

My name is William R. Hill. I am over eighteen (18) years of age and otherwise competent to give testimony in this matter. The facts set forth in this Affidavit are true and based upon my personal knowledge.

2.

I am currently President of Chamber Health Care Society, Incorporated. ("Chamber"). I have served in this position for more than three years.

3.

Riverside Nursing Home (the "Facility") is a skilled nursing facility that is located in Covington, Newton County, Georgia. In 1989, the Newton County Industrial Development Authority (the "Issuer") issued bonds (the "Riverside Bond Issuance") in the amount of \$5,110,000. The Riverside Bonds are secured by a first priority deed to secure debt on the Facility given by Health Scholarships, Inc. ("HSI"). Chamber is the successor-in-interest to HSI.

The Riverside Bond Issuance is governed, in part, by that certain Trust Indenture between the Issuer and General Trust Company (the "Indenture"), a true and accurate copy of excerpts of which are attached hereto as Exhibit A.

4.

In accordance with the terms of the Indenture, the Riverside Bonds were administered through a trust. Sentinel Trust Company ("Sentinel") is the successor trustee to General Trust Company, and the bondholders (the "Riverside Bondholders") are the beneficiaries of the trust. Sentinel has since been placed in receivership by Commissioner of the Tennessee Department of Financial Institutions.

5.

Pursuant to the Indenture, Sentinel was required to maintain the following Fiduciary Accounts: (1) Principal and Interest Account (Account Number 465256010 Newton County, Georgia 1989 Bond Fund) (the "Principal Account") and (2) Debt Service Reserve Fund (Account Number 465256011 Newton County, Georgia 1989 DSR Fund) (the "Debt Service Account"). According to Chamber's records, as of July 14, 2004, the balances of the Principal Account and the Debt Service Account should have been \$237,124.03 and \$119,479.88, respectively. Due to Sentinel's misuse of pooled fiduciary accounts, however, Chamber was advised by the Receiver that these funds would not be available for redemption of the Riverside Bonds. Accordingly, Sentinel's misuse of funds has damaged Chamber in an amount no less than \$356,603.91.

6.

Chamber acquired the Facility subject to the Riverside Bonds. As of June 16, 2004, the principal and interest amount due under the Riverside Bonds is approximately \$4,540,000.00. Chamber has entered into an agreement in principle (the "Proposed Agreement") with West Street Associates, LLC ("West Street") pursuant to which West Street would acquire the Facility for a purchase price equal to the amount of principal and interest due the bondholders (the "Purchase Price"). These bonds are secured by three security instruments, a copy of which are attached hereto as Exhibit B.

7.

The Indenture allows Chamber to redeem the bonds prior to the maturity date (the "Early Redemption Provision"). If Chamber chooses to exercise the Early Redemption Provision, the Indenture requires Chamber to pay the funds to Sentinel. There is a provision in the Indenture (the "Retention Provision") that, unless waived by Sentinel, requires Sentinel to maintain these funds for ninety days before they can be released to the bondholders. At the end of those ninety days, Sentinel would then provide thirty days notice to the bondholders, after which Sentinel would repay the bondholders all principal and interest due in full satisfaction of the bonds. The Receiver has provided a payable letter indicating that the per diem interest due the bondholders is \$1,229.63. See Letter from R. Williams to C. Miller dated June 16, 2004, attached hereto as Exhibit C. Accordingly, the cost to Chamber of this provision is approximately \$36,889 per month. This would be approximately \$147,555 for the 120-day period. At the same time, West Street would be paying interest on the funds borrowed to close the transaction.

8.

To eliminate this unnecessary dual accrual of interest, Chamber approached the Receiver and requested that the Receiver waive the ninety-day waiting period and thirty-day notice period primarily because: (a) if the Proposed Sale is closed, the bondholders would benefit greatly by being repaid the full principal and interest due under the Riverside Bonds immediately, including the reserve accounts which currently are unavailable due to mismanagement by Sentinel; and (b) the primary purpose of the ninety-day waiting period – to reduce the risk of a preference action section 547 of the Bankruptcy Code – would not be implicated by the proposed transaction with West Street because the Purchase Price in the Proposed Agreement does not exceed the fair market value of the Facility.

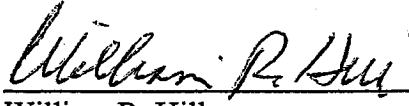
9.

The Receiver inexplicably refused to waive the Retention Provision waiting period. Chamber is aware that, in other bond redemptions involving Sentinel and the identical Retention Provision language, Sentinel has waived the ninety day period. By refusing to waive the ninety day period in this case, the Receiver jeopardizes the Proposed Agreement and payment to the bondholders of the principal and interest due under the Riverside Bonds.


10.

Chamber is currently solvent and in good financial condition. The repayment of the bondholders pursuant to the Agreement will not place undue financial stress on Chamber. Chamber has no present intention to seek bankruptcy protection.

Further, Affiant sayeth not.

  
\_\_\_\_\_  
William R. Hill

Sworn and subscribed  
before me this 19<sup>th</sup> day  
of July, 2004.

  
\_\_\_\_\_  
Notary Public  
My commission expires:

\_\_\_\_\_  
**L. Thomas, Notary Public, DeKalb County, GA**  
**My Commission Expires Sept. 6, 2007**

FILED Aug 29 1989  
TIME 2:23 PM  
RECORDED Aug 29 1989  
BOOK 348 PAGE 179-281

LINDA D. HAYS  
CLERK SUPERIOR COURT  
NEWTON COUNTY, GEORGIA

TRUST INDENTURE

THIS TRUST INDENTURE (The "Indenture"), dated as of August 1, 1989, made and entered into by and between the NEWTON COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, a public body corporate and politic created and existing under the laws of the State of Georgia (the "Issuer"), and GENERAL TRUST COMPANY, a trust company organized and existing under and by virtue of the laws of the State of Tennessee, having power and authority to accept and execute trusts, and having a principal corporate trust office in Nashville, Tennessee, as trustee (the "Trustee").

W I T N E S S E T H:

WHEREAS, the Issuer has been created pursuant to the acts of the General Assembly of the State of Georgia (Ga. Laws 1964, Page 825, et seq.) (the "Act"); and

WHEREAS, the Issuer has been created for the purpose of promoting and expanding the public good and welfare and industry and trade within Newton County and reducing unemployment to the greatest extent possible; and

WHEREAS, the Issuer, by due corporate action, has authorized the financing of the acquisition of the 128-bed skilled and intermediate care nursing home located at 5100 West Street, Covington, Newton County, Georgia and the construction of thirty-one (31) additional beds (the "Project"), pursuant to plans and specifications therefor, such Project to be financed by the Issuer for Health Scholarships, Inc., a Georgia nonprofit corporation (the "Borrower"), pursuant to a Loan Agreement, dated as of August 1, 1989 (the "Agreement"); and

WHEREAS, after careful study and investigation of the nature of the proposed Project, the Issuer has determined that, in assisting with the financing of the Project, it will be acting in furtherance of the public purposes intended to be served by the Act, and

### OPTIONAL REDEMPTION

The Bonds are subject to redemption prior to maturity, at any time on or after August 1, 1999, in whole but not in part, at the redemption prices (expressed as percentages of principal amount) set forth in the table below plus accrued interest or interest due thereon on such redemption date; provided that the Borrower furnishes the bondholders with a certificate prior to redemption that no preferences have been advanced within the ninety (90) day period prior to such redemption; and provided further that the Trustee furnishes the bondholders with written notice of such optional redemption in which the Trustee certifies that it has sufficient funds available (funds which have been on deposit with the Trustee for at least ninety (90) days prior to such notice, during which ninety (90) days no preferences have been advanced and no Act of Bankruptcy as defined in this Indenture has occurred), to pay the full redemption price.

<u>Dates of Redemption</u> <u>Inclusive</u>	<u>Redemption</u> <u>Prices</u>
From August 1, 1998 to July 31, 1999	103%
From August 1, 1999 to July 31, 2000	102%
From August 1, 2000 to July 31, 2001	101%
From August 1, 2001 or thereafter	100%

### MANDATORY SINKING FUND REDEMPTION

The Bonds are subject to mandatory sinking fund redemption prior to maturity, in accordance with Section 304 of the Indenture, in part, at a redemption price equal to the principal amount of each Bond to be redeemed, plus the interest due thereon on the redemption date, in the following amounts and on the dates set forth below:

ARTICLE V.

REVENUES AND FUNDS

Section 501. Source of Payment of Bonds. The obligation of the Issuer to pay the principal of, and the interest on, the Bonds is not a general obligation of the Issuer but is a limited obligation payable solely from the Pledged Revenues.

The installment amounts provided for in Section 4.2 of the Agreement are to be remitted directly to the Trustee for the benefit of the bondholders and are to be deposited in the Bond Fund. Said installment amounts are sufficient in amount and become due in a timely manner so as to insure the prompt payment of the principal (including redemption premiums) of, and the interest on, the Bonds.

Section 502. Creation of the Bond Fund. There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated "Newton County Industrial Development Authority Bond Fund -- Health Scholarships, Inc. Project, 1989", which shall be used to pay the principal of, and the interest on, the Bonds

Section 503. Payments into the Bond Fund. There shall be paid into the Bond Fund, as and when received,

(a) any amount remaining in the Project Fund to the extent provided in Section 3.3(h) of the Agreement,

(b) all payments specified in Section 4.2 of the Agreement,

(c) all moneys required to be so deposited pursuant to Section 304,

(d) all other moneys received by the Trustee under and pursuant to any of the provisions of this Indenture, the Agreement, or the Security Agreement which are required or which are required or which are accompanied by directions that such moneys are to be paid into the Bond Fund.



The Issuer agrees that so long as any of the Bonds are outstanding it will pay, or cause to be paid, into the Bond Fund from the sources of payment described in Section 501 sufficient moneys to promptly pay the principal of, and the interest on, the Bonds as the same become due and payable (including mandatory sinking fund redemption pursuant to Section 304). To this end, the Issuer agrees that if there occurs an event of default under this Indenture, the Agreement, or the Security Agreement, the Issuer will fully cooperate with the Trustee and with the bondholders to the end of fully protecting the rights and security of the bondholders.

Section 504. Use of Moneys in the Bond Fund.

(a) Except as provided in Sections 508, 702 and 1002, moneys in the Bond Fund shall be used solely for the payment of the principal (including redemption premiums) of, and the interest on, the Bonds. No part of the payments to be made by the Borrower under the Agreement required to be paid into the Bond Fund (excluding prepayments under Section 7.2 of the Agreement and amounts paid in connection with the sinking fund requirements of Section 304) shall be used to redeem, prior to maturity, the Bonds or any portions thereof; provided, that whenever the moneys held in the Bond Fund from any source whatsoever are sufficient to redeem all of the Bonds and to pay interest to accrue thereon prior to such redemption, the Issuer agrees to take and cause to be taken the necessary steps to redeem all of the Bonds on the next succeeding redemption date for which the required redemption notice can be given; and, provided, further, that any moneys in the general and special accounts in the Bond Fund other than the payments required of the Borrower under the Agreement may be used to redeem a portion of the Bonds so long as the Borrower has paid all required payments under the Agreement.

(b) At the maturity date or the redemption date prior to maturity of each Bond and at the due date of each installment of interest on each Bond the Trustee shall transfer from the general account in the Bond Fund to the special account in the Bond Fund sufficient moneys to pay any principal and/or interest then due and payable with respect to each such Bond. Moneys so transferred into said special account shall not thereafter be invested in any manner but shall be held by the Trustee without liability

on the part of the Trustee or the Issuer for interest thereon until actually paid out for the purposes intended.

The Issuer hereby authorizes and directs the Trustee to withdraw, from time to time, sufficient moneys from the special account in the Bond Fund to pay the principal of, and the interest on, the Bonds as the same become due and payable, to make any payments required to be made pursuant to Section 301, and to make any payments required to be made on any redemption date in connection with Bonds called for redemption, which authorization and direction the Trustee hereby accepts.

Section 505. Non-presentment of Bonds at Final Maturity. If any Bond shall not be presented for payment when the principal thereof or the final installment of principal thereof becomes due, either at maturity or at the redemption date, provided moneys sufficient to pay such Bond shall have been made available to the Trustee and are held in the appropriate account in the Bond Fund for the benefit of the holder thereof, all liability of the Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, subject to the provisions of Section 508(b), in said account, without liability for interest thereon, for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to moneys held in said account, or paid by the Trustee to the Borrower pursuant to the provisions of Section 508(b), for any claim of whatever nature on his part hereunder or on, or with respect to, such Bond.

Section 506. Trustee's and Paying Agents' Fees, Charges and Expenses. Pursuant to the terms of the Agreement, the Borrower has agreed to pay directly to the Trustee, commencing with the Completion Date and continuing until the principal of, and the interest on, the Bonds shall have been paid in full:

... as paying agent and as bond registrar, and the reasonable fees of Trustee's Counsel, as and when the same become due.

It is further understood and agreed that the initial or acceptance fee of the Trustee and the fees, charges and expenses of the Trustee referred to in the preceding sentence which become due prior to the time the Borrower becomes obligated to pay the same, will be paid to the Trustee from the Project Fund, as and when the same shall become due. As specified in Section 4.3 of the Agreement, the Borrower may contest in good faith the necessity for and the reasonableness of any of the fees and charges referred to herein.

Section 507. Moneys to Be Held in Trust. All moneys paid over to the Trustee for the account of the Bond Fund (to be held in the general account or the special account) under any provision hereof shall be held (subject to the provisions of Section 508) in trust by the Trustee for the benefit of the holders of the Bonds entitled to be paid therefrom.

Section 508. Payments to the Borrower from the Bond Fund.

(a) Any moneys remaining in the general account in the Bond Fund after payment in full of all Bonds (taking into account Section 702), the fees, charges and expenses of the Trustee, the paying agent(s) and the Bond Registrar which have accrued and which will accrue and all other items required to be paid hereunder (other than items payable from the special account in the Bond Fund) shall be paid to the Borrower upon the expiration or sooner termination of the term of the Agreement as provided in Article VII of the Agreement.

(b) Any moneys held by the Trustee in the special account in the Bond Fund shall be retained by the Trustee for the payment or the redemption of Bonds not yet presented for payment or redemption. If after three (3) years such moneys held for the holders of certain Bonds have not been claimed, it shall be the duty of the Trustee forthwith to return to the Borrower all moneys held by the Trustee in said special account, subject to any other requirements of law as may be applicable to such funds, and any such holder shall thereafter, as an unsecured general creditor, look only to the Borrower for the payment of any such Bond and all liability of the Trustee shall thereupon cease.

ARTICLE VI.

CUSTODY AND APPLICATION OF PROCEEDS OF BONDS

Section 601. Creation of the Project Fund.

There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated "Newton County Industrial Development Authority Project Fund -- Health Scholarships, Inc. Project, 1989."

Section 602. Disposition of Bond Proceeds.

Upon the issuance and delivery of the Bonds, the proceeds of the sale of the Bonds (exclusive of accrued interest, if any) shall be deposited into the Project Fund.

Section 603. Disbursements from Project Fund.

Moneys in the Project Fund shall be disbursed in accordance with the provisions of the Agreement, and particularly Sections 3.3 and 3.5 thereof. The Trustee is hereby authorized and directed to issue its checks for each disbursement to be made pursuant to the provisions of the Agreement and the Trustee shall be relieved of all liability with respect to disbursements made in accordance with the provisions of Sections 3.3 and 3.5 of the Agreement.

Pursuant to Section 144(a)(1) of the Code, 95% of the net proceeds of the Bonds (after subtracting the amount contained in the Debt Service Reserve Fund but before subtracting costs of issuance) shall be used for qualifying costs. In addition, pursuant to Section 147(g) of the code, costs of issuance paid from the proceeds of the Series A Bonds shall not exceed two percent (2%) of the aggregate face amount of the Bonds.

The Trustee shall maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Project has been completed and a certificate of payment of all costs filed as provided in Section 604, the Trustee shall file an accounting thereof with the Issuer and the Borrower if requested to do so by either such party.

Section 604. Completion of the Project. The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate signed by the Authorized Borrower Representative (designated pursuant to the terms of the Agreement), which certificate shall state that all costs and expenses in connection with the Project and payable out of the Project Fund have been paid except for costs and expenses not then due and payable with respect to which funds are being retained in the Project Fund with the approval of the Borrower for the payment of the same. As soon as practicable, and in any event not later than sixty (60) days from the date of the latter certificate referred to in the preceding sentence, any moneys remaining in the Project Fund (other than moneys retained to pay costs and expenses not then due and payable) shall be used as specified in Section 3.3(h) of the Agreement relating to the use of moneys in the Project Fund. Any balance remaining of moneys retained to pay costs and expenses after full payment of such costs and expenses shall be used as specified in Section 3.3(h) of the Agreement. Unless there shall be delivered to the Trustee an opinion of nationally recognized bond counsel acceptable to the Trustee stating that the yield need not be so restricted, amounts held for application under this Section shall not, after the completion of the Project, be invested at a yield in excess of the yield on the Bonds from which such amounts were derived.

Section 605. Creation of Special Fund. There is hereby created by the Issuer and ordered established with the Trustee, as part of and within the Bond Fund, a Special Fund to be designated "Newton County Industrial Development Authority Special Fund - Health Scholarships, Inc. Project, 1989", which shall be used for the purpose of collecting, managing, and disbursing insurance and condemnation proceeds, if any, associated with the Project.

Section 606. Creation of Debt Service Reserve Fund. There is hereby created by the Issuer and ordered established with the Trustee, as part of and within the Bond Fund, a Debt Service Reserve Fund to be designated "Newton County Industrial Development Authority Debt Service Reserve Fund - Health Scholarships, Inc. Project, 1989", which shall be originally funded with a deposit of \$500,000 out of the bond proceeds upon the issuance of the Bonds. Such amount shall be invested by the Trustee in

Permitted Investments and used to pay principal and interest on the Bonds to the extent funds are otherwise unavailable therefore in the Project Fund. If any amount of the original or replenished \$500,000 contained in the Debt Service Reserve Fund must be used to make payments of principal and interest on the Bonds, such amount shall be replenished by the Borrower within twelve (12) months of withdrawal.

## SECURITY INSTRUMENTS ON RIVERSIDE FACILITY

- A. Deed to Secure Debt and Security Agreement, dated as of August 1, 1989, recorded at Deed Book 348, page 150, Newton County, Georgia Records, as assigned to General Trust Company by Assignment contained in Trust Indenture, recorded at Deed Book 348, page 179, Newton County, Georgia Records, as further assigned to Sentinel Trust Company by Instrument of Resignation, Appointment and Acceptance of the Office of Trustee, dated March 31, 1995, and recorded at Deed Book 546, page 153 Newton County, Georgia Records.
- B. Trust Indenture between Newton County Industrial Development Authority and General Trust Company, dated August 1, 1989, and recorded at Deed Book 348, page 179 Newton County, Georgia Records; as assigned to Sentinel Trust Company by Instrument of Resignation, Appointment and Acceptance of the Office of Trustee, dated March 31, 1995, and recorded at Deed Book 546, page 153, Newton County, Georgia Records;
- C. UCC-1 Financing Statement File #42810, filed August 29, 1989, Newton County, Georgia Records; as assigned by UCC-3 Financing Statement File #107-1995-000496 to Sentinel Trust Company, aforesaid records; as continued by UCC-3 Financing Statement File #107-1999-0877, filed April 5, 1999, aforesaid records.

# SENTINEL

## TRUST COMPANY

8122 Sawyer Brown Road  
Nashville, TN 37221-1402

Telephone: (615) 662-5129

(800) 825-6596

Telecopier: (615) 646-6513

June 16, 2004

Fax: 478-464-5382

R. Chix Miller  
Sell & Melton, LLP  
Fourteenth Floor  
577 Mulberry Street  
Macon, GA 31201

Re: Newton County Industrial Development Authority  
Qualified 501 (c) (3) Bonds, Series 1989  
(Health Scholarships, Inc. Project)

Dear Chix:

Outlined below is the calculation of the amount of funds that would be required to redeem all outstanding bonds on June 16, 2004. Interest accrues at a per diem rate of \$1,229.63.

\$4,540,000.00	- Outstanding bonds
166,000.56	- Interest to June 16, 2004
6,787.50	- Trustee administration fee
500.00	- Estimated expenses
<u>\$4,713,288.06</u>	- Total amount due

The Indenture dated as of August 1, 1989 requires the Trustee to give at least thirty (30) days notice of redemption to all bondholders and requires the Borrower to deposit with the Trustee sufficient funds to pay the redemption price at least ninety (90) days prior to the giving of such notice to bondholders. In addition, any funds on deposit with the Trustee prior to May 18, 2004 cannot be used at this time to pay any part of the redemption price.

Please call me, if you have any questions.

Sincerely,



Paul Williams  
Executive Vice President  
615-662-5129, ext. 17

cc: Jeanne Barnes Bryant, Receiver